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DOCKET NO.: C1039.70073US00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Krieg et al.  
Serial No.: 10/743,625  
Confirmation No.: 9416  
Filed: December 22, 2003  
For: IMMUNOSTIMULATORY NUCLEIC ACID  
Examiner: Nita M. Minnifield  
Art Unit: 1645

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to MAIL STOP AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 23<sup>rd</sup> day of January, 2007.

*Emily E. Zukauskas*  
Emily E. Zukauskas

MAIL STOP AMENDMENT  
Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith are the following documents:

- Information Disclosure Statement
- PTO Form 1449 with cited references
- Return Receipt Postcard

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 646-8000, Boston, Massachusetts.

A check in the amount of \$180 is enclosed to cover the filing fee. If the fee is insufficient, the balance may be charged to Deposit Account 23/2825. A duplicate of this sheet is enclosed.

Respectfully submitted,

By: *Helen C. Lockhart*  
Helen C. Lockhart, Ph.D., Reg. No.: 39,248  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
Telephone: (617) 646-8000

Docket No.: C1039.70073US00  
Date: January 23 2007  
xNDDx



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Emily E. Zukauskas

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**MAIL STOP AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

STATEMENT FILED PURSUANT TO THE DUTY OF  
DISCLOSURE UNDER 37 CFR §§1.56, 1.97 AND 1.98

Sir:

Pursuant to the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98, the Applicant requests consideration of this Information Disclosure Statement.

PART I: Compliance with 37 C.F.R. §1.97

This Information Disclosure Statement has been filed more than three months after the filing date of this application and after the mailing date of the first Office action, but before the mailing date of any final action under 37 C.F.R. §1.113, a Notice of Allowance under 37 C.F.R. §1.311, or an action that otherwise closes prosecution in this application.

The fee of \$180.00 as set forth in 37 C.F.R. §1.17(p) is enclosed.

PART II: Information Cited

The Applicant hereby makes of record in the above-identified application the information listed on the attached form PTO-1449 (modified PTO/SB/08). The order of presentation of the references should not be construed as an indication of the importance of the references.

The Applicant hereby makes the following additional information of record in the above-identified application.

The Applicant would like to bring to the Examiner's attention the following co-pending applications that may contain subject matter related to this application:

<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor(s)</u>	<u>Docket No.</u>
10/811,226	03-26-2004	Wagner et al.	*C1041.70005US01
11/503,377	08-11-2006	Krieg et al.	*C1039.70061US01
11/507,079	08-18-2006	Krieg et al.	*C1039.70035US04
11/526,197	09-22-2006	Krieg et al.	*C1039.70048US23
11/526,896	09-22-2006	Bratzler et al.	*C1037.70013US03
11/542,845	10-04-2006	Krieg et al.	*C1037.70048US01
11/543,314	10-04-2006	Lipford et al.	*C1041.70036US02
11/595,823	11-10-2006	Wagner et al.	*C1041.70035US01
11/598,207	11-10-2006	Krieg et al.	*C1039.70048US24
11/603,978	11-22-2006	Forsbach et al.	*C1041.70053US02
11/629,106	12-08-2006	Lipford et al.	*C1041.70027US01
11/645,106	12-22-2006	Krieg et al.	*C1039.70083US17

\*A copy of this reference is not provided as the Office has waived the requirement under 37 C.F.R. 1.98(a)(2)(iii) for submitting a copy of a cited U.S. patent application if it is scanned to the Image File Wrapper system and is available on Private PAIR.

PART III: Explanation of Non-English Language References and Remarks Concerning Other Information Cited

The following are remarks concerning the other information cited:

The instant patent application derives priority from US 6,207,646 B1, which was involved in an Interference (Interference No. 105,171). In view of the priority, Applicants have included on the attached 1449 a listing of all of the motions filed, the judgment rendered by the

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Board of Patent Appeals and Interferences, appeal briefs, and appeal decision, which considered the 35 U.S.C. §135(b)(1) motion dispositive. Copies of these documents were previously submitted in Serial No. 09/818,918, filed March 27, 2001, to which the instant application derives priority. If the Examiner would like any additional information on this subject, she is encouraged to contact Applicant's representative at the number listed below.

PART IV: Remarks

Documents cited anywhere in the Information Disclosure Statement are enclosed unless otherwise indicated. It is respectfully requested that:

1. The Examiner consider completely the cited information, along with any other information, in reaching a determination concerning the patentability of the present claims;
2. The enclosed form PTO-1449 (modified PTO/SB/08) be signed by the Examiner to evidence that the cited information has been fully considered by the Patent and Trademark Office during the examination of this application;
3. The citations for the information be printed on any patent which issues from this application.

By submitting this Information Disclosure Statement, the Applicant makes no representation that a search has been performed, of the extent of any search performed, or that more relevant information does not exist.

By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56(b).

By submitting this Information Disclosure Statement, the Applicant makes no representation that the information cited in the Statement is, or is considered to be, in fact, prior art as defined by 35 U.S.C. §102.

Serial No.: 10/743,625  
Conf. No.: 9416


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Art Unit: 1645

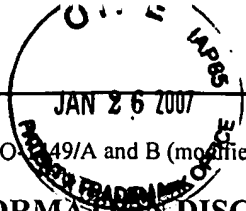
Notwithstanding any statements by the Applicant, the Examiner is urged to form his or her own conclusion regarding the relevance of the cited information.

An early and favorable action is hereby requested.

Respectfully submitted,

By:   
Helen C. Lockhart, Ph.D., Reg. No. 39,248  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
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FORM PTO 249/A and B (modified PTO/SB/08)  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				APPLICATION NO.: 10/743,625		ATTY. DOCKET NO.: C1039.70073US00			
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				APPLICANT: Krieg et al.					
				GROUP ART UNIT: 1645		EXAMINER: Nita M. Minnifield			
Sheet	1	of	19						

**U.S. PATENT DOCUMENTS**

Examiner's Initials #	Cite No.	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication or Issue of Cited Document MM-DD-YYYY
		Number	Kind Code		
		5,112,605		Jardieu	05-12-1992
		5,498,410		Gleich	03-12-1996
		5,679,647		Carson et al.	10-21-1997
		5,681,555		Gleich	10-28-1997
		5,908,620		Tu et al.	06-01-1999
		5,955,059		Gilchrest et al.	09-21-1999
		5,994,315		Nyce et al.	11-30-1999
		6,025,339		Nyce	02-15-2000
		6,040,296		Nyce	03-21-2000
		6,090,791		Sato et al.	07-18-2000
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		6,174,872	B1	Carson et al.	01-16-2001
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		6,479,504		Macfarlane et al.	11-12-2002
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		6,727,230	B1	Hutcherson et al.	04-27-2004
		6,797,276	B1	Glenn et al.	09-28-2004
		6,815,429	B2	Agrawal	11-09-2004
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		6,936,261	B2	Granoff et al.	08-30-2005
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		2001-0044416	A1	McCluskie et al.	11-22-2001
		2002-0064515	A1	Krieg et al.	05-30-2002
		2003-0087848	A1	Bratzler et al.	05-08-2003

EXAMINER:	DATE CONSIDERED:
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\* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

FORM PTO-1449/A and B (modified PTO/SB/08)  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>				APPLICATION NO.: 10/743,625		ATTY. DOCKET NO.: C1039.70073US00			
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				APPLICANT: Krieg et al.					
				GROUP ART UNIT: 1645		EXAMINER: Nita M. Minnifield			
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		2004-0009949	A1	Krieg	01-15-2004
		2004-0030118	A1	Wagner et al.	02-12-2004
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		2004-0067902	A9	Bratzler et al.	04-08-2004
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		2004-0092468	A1	Schwartz et al.	05-13-2004
		2004-0106568	A1	Krieg et al.	06-03-2004

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		2006-0286070	A1	Hartmann et al.	12-21-2006
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		2007-0009482	A1	Krieg et al.	01-11-2007
		2007-0010470	A1	Krieg et al.	01-11-2007

#### FOREIGN PATENT DOCUMENTS

Examiner's Initials #	Cite No.	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document MM-DD-YYYY	Translation (Y/N)
		Office/ Country	Number	Kind Code			
		EP	0 766 571	B1	Steris Corporation	04-09-1997	
		WO	96/32138	A1	Milkhaus Laboratory	10-17-1996	
		WO	99/52549	A1	Smithkline Beecham Biologicals S.A.	10-29-1999	
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		WO	2004/039829	A2	Coley Pharmaceutical Group, Ltd.	05-13-2004	
		WO	2004/094671	A2	Coley Pharmaceutical GmbH	11-04-2004	

#### OTHER ART — NON PATENT LITERATURE DOCUMENTS

Examiner's Initials #	Cite No	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	Translation (Y/N)
		[No Author Listed] Allergen Nomenclature, List of Allergens (as of March 12, 2004).	
		[No Author Listed] Expert panel report 2: Guidelines for the diagnosis and management of asthma – Clinical practice guidelines. National Institutes of Health Publication. 1997 Jul; No. 97-4051:iii-79.	
		[No Author Listed] DNA is the primary genetic material. in Recombinant DNA, Second Edition. Watson et al., editors. Scientific American Books, New York. p24-5, 147. Exhibit 1003.	
		[No Author Listed] Definitions. in The Dictionary of Immunology, Fourth Edition. Herbert et al., editors. Academic Press, 1995. p10. Exhibit 1004.	
		[No Author Listed] <a href="http://www.doctorfungus.com/the_fungi/Cryptococcus.htm">http://www.doctorfungus.com/the_fungi/Cryptococcus.htm</a> . Exhibit 1029.	
		[No Author Listed] <a href="http://www.doctorfungus.com/the_fungi/Blastomyces.htm">http://www.doctorfungus.com/the_fungi/Blastomyces.htm</a> . Exhibit 1030.	

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				GROUP ART UNIT: 1645		EXAMINER: Nita M. Minnifield		
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		[No Author Listed] <a href="http://www.doctorfungus.com/the_fungi/Alternaria.htm">http://www.doctorfungus.com/the_fungi/Alternaria.htm</a> . Exhibit 1031.	
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	*	Patent Interference No. 105,171. Iowa Preliminary Motion 7 (motion to redefine interference to designate claims as not corresponding to the Count). (Electronically filed, unsigned). June 7, 2004.	
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	*	Patent Interference No. 105,171. Regents of the University of California Opposition 7 (to Iowa Preliminary Motion 7 to redefine the interference). September 9, 2004.	
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*	Patent Interference No. 105,171. Regents of the University of California Contingent Preliminary Motion 8 (to add additional claims under 37 CFR 1.633(c)(2) and (i)). July 2, 2004.	
*	Amended Claims for Application Number 09/265,191, filed March 10, 1999.	
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	*	Patent Interference No. 105,171. Regents of the University of California. Brief of Appellant. July 5, 2005.	
	*	Patent Interference No. 105,171. University of Iowa and Coley Pharmaceutical Group, Inc. Brief of Appellees. August 17, 2005.	
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\*a copy of this reference is not provided as it was previously cited by or submitted to the office in a prior application, Serial No. 09/818,918, filed March 27, 2001, and relied upon for an earlier filing date under 35 U.S.C. 120 (continuation, continuation-in-part, and divisional applications).

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